THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION NO.24264 OF 2005

Dated : 20th December, 2005.

Between:

Yerraguntla Venkata RAo

… Petitioner

And

1. The Revenue Divisional Officer,

   Narasaraopet, Guntur District

and two others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.24264 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the order dated 29-10-2005 passed by the 1st respondent – Revenue Divisional Officer, Narasaraopet whereunder the third respondent herein was appointed as fair price shop dealer of Mathukumalli Village, Savalyapuram Mandal, Guntur District as arbitrary and illegal.

On bifurcation of the fair price shop of Mathukumalli Village, the 1st respondent – Revenue Divisional Officer issued a notification for appointment of the fair price

shop dealer for the newly created shop. A notification dated 12-8-2005 was published in the local dailies inviting applications from the interested candidates on or before 16-8-2005. In response to the said notification, the writ petitioner submitted his application on 16-8-2005. It is not in dispute that the third respondent herein has also applied for the same. The petitioner states that apart from them, two other candidates have applied and all of them received intimations to attend the interview on 22-10-2005 at 10.30 a.m. The petitioner also states that on 22-10-2005 he was interviewed by the 1st respondent and he was informed that the decision will be informed later. Since he is better-qualified among all the four candidates, he expected that he would be selected and appointed as the fair price shop dealer. However, under the impugned proceedings dated 29-10-2005 the third respondent herein was appointed observing that the third respondent was the only candidate who applied in response to the notification. Aggrieved by the said order, this writ petition is filed.

The petitioner primarily contends that the impugned order under which the third respondent was appointed on the premise that he was the only candidate who applied in response to the notification dated 12-8-2005 is arbitrary and illegal.

The Revenue Divisional Officer, Narasaraopet, Guntur district filed a counter-affidavit in which the fact that four applications were received including the application of the petitioner and the third respondent within the stipulated time has not been disputed. However, it is stated that the interview could not be conducted on 22-10-2005 due to unavoidable circumstances and the petitioner and the third respondent were advised orally to attend the interview at 10.30 a.m. on 24-10-2005 but they failed to attend.

The petitioner in his Reply affidavit disputed the said version and asserted that the interview was conducted on 22-10-2005 and in spite of the fact that the petitioner attended the interview, the respondents failed to consider his candidature.

Heard the learned Counsel for both the parties, and perused the record placed

before this Court by the learned Government Pleader.

The record shows that separate notices were served on all the four candidates stating that the interview would be conducted on 22-10-2005 at 10.30 a.m. Though the respondents in the counter-affidavit stated that the interview could not be conducted on 22-10-2005 due to unavoidable circumstances, the record does not contain any proceedings to that effect.

It is relevant to note that even the impugned order reflects that the interview was conducted on 22-10-2005 as scheduled.

It is also curious to note that whereas in the impugned proceedings it was mentioned that only the third respondent appeared for interview, page 43 of the record contains a separate order in which certain corrections were made to the effect that on the same day the writ petitioner was also interviewed.

Thus, it is clear that the version of the respondents in the counter-affidavit is not based on the record and cannot be accepted. Hence, I find force in the contention of the petitioner that the respondents did not consider the candidature of the writ petitioner and appointed the third respondent erroneously on the ground that he was the only candidate who applied in response to the notification dated 12-8-2005.

In the circumstances, though the learned Counsel for the 3rd respondent vehemently contended that the petitioner failed to exhaust the alternative remedy of appeal available under the Statute, and therefore he cannot straightaway maintain this writ petition, I am unable to agree. On the face of it, the impugned order is illegal and violative of Article 14 of the Constitution of India since evidently the other candidates who applied in response to the notification were not considered. Hence, the availability of the alternative remedy is not a bar to grant the relief under Article 226 of the Constitution of India.

Accordingly, the impugned order is set aside and the 1st

respondent – Revenue Divisional Officer is directed to fix a fresh date for interview and inform all the candidates in advance and thereafter take the necessary further steps in accordance with law. Till the selections are finalized and appointment is made, the respondents shall make temporary arrangement for distribution of the essential commodities to the cardholders attached to the shop in question.

The Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 20-12-2005

Note:- CC in 3 days.

(B/O)

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